

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
	:	
Petition for waiver pursuant to Condition	:	00-0238
(30) of the SBC/Ameritech Merger Order.	:	

ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

By the Commission:

On March 24, 2000, Illinois Bell Telephone Company ("Ameritech Illinois" or "AI") filed a Petition for Waiver under Condition 30 of the Order entered by the Illinois Commerce Commission ("Commission") in Docket 98-0555. ("Merger Order"). According to AI's pleading, the provisions of Condition 30 set out requirements relative to performance measures, benchmarks and liquidated damages, and further authorize the granting of certain waivers by the Commission.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before duly authorized Administrative Law Judges of the Commission at its offices in Chicago, Illinois on April 26, 2000, May 25, 2000, June 29, 2000, and August 21, 2001. The following parties intervened or entered appearances, by their respective counsel, in the instant proceeding: Ameritech Illinois; the Staff of the Commission ("Staff"); the People of the State of Illinois ("AG"); AT&T Communications of Illinois, Inc. ("AT&T"); McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"); MCI WorldCom Inc. ("MCI"); Sprint Communications Company, L.P. ("Sprint"); Association for Local Telecommunication Services ("ALTS"); MGC Communications, Inc. d.b.a. Mpower Communications, Inc. ("Mpower"); and NEXTLINK Illinois, Inc. ("Nextlink"). All of the Petitions to Intervene were or are hereby granted.

At the hearing date of August 21, 2001, the testimony of Salvatore Fioretti, the Director of Performance Measures for Ameritech Illinois was admitted into the record. (AI Exhibit 1.0; late-filed). No other party, or Staff, submitted any testimony. The record was marked "Heard and Taken" on that date. Thereafter, on September 18, 2001, AI filed a Draft Proposed Order.

The Administrative Law Judges' Proposed Order for this proceeding was issued on October 12, 2001.

Background – Condition 30

As indicated above, Condition 30 of the SBC/Ameritech Merger Order set out certain requirements relative to performance measures, benchmarks and liquidated damages (Order, Docket 98-0555, September 23, 2001.) The provisions of Condition 30 required that a joint SBC/Ameritech task force (“Task Force”) be established so as to develop a plan to implement OSS and facilities performance measurements, standards/benchmarks and remedies in Illinois based on 122 performance measurements SBC agreed to implement in Texas (“the Texas Plan”). This Task Force was assigned to identify which Texas performance measures or standards/benchmarks were not “technically feasible” to implement in Illinois.

Subsequent to the task force review, Ameritech Illinois was required to work together with Staff, the competitive local exchange carriers (“CLECs”) and any other interested party, in a collaborative process, to establish the initial performance measures, standards/benchmarks and a remedy plan. For those performance measurements and standards/benchmarks that were not technically feasible to implement, Ameritech Illinois could seek a waiver from the Commission. As such, Ameritech Illinois was required to file a report detailing the timeline for implementing each of the performance measures, and stating the reasons why any of those measures were deemed “infeasible” for implementation. (Merger Order, Condition 30 at para. 4).

Notably, while the Texas Plan was based on a combination of “parity” and “benchmark” standards to assess SBC’s performance, the Commission expressed a preference for the use of parity, rather than benchmark, standards. (Merger Order at 221). In instances where Ameritech Illinois proposed to use a benchmark standard, the Commission put the burden on Ameritech Illinois to demonstrate that no retail analog exists for that measure. (Merger Order, Condition 30 at para.9). The Petition for Waiver, which is the subject of this proceeding, was filed in compliance with these requirements.

Subsequently, on February 5, 2001, Ameritech Illinois and other interested carriers filed a Joint Petition seeking Commission approval of the performance measures and standards/benchmarks which had been agreed to and requesting resolution of disputed issues which relate to the remedy plan associated with those measures and benchmarks. Thus began Docket 01-0120. Any remedy plan issues associated with the measures and standards/benchmarks themselves, including those that are the subject of the instant waiver request, are currently being addressed in Docket 01-0120.

Ameritech Illinois Position

The direct testimony of AI witness Salvatore Fioretti states that all of the disputed issues between the parties have been resolved (except for the remedy plan now pending in Docket 01-0120), either through the collaborative process, or in discussions held subsequent to the filing of the Petition. AI notes that both AT&T and Staff

supported Ameritech Illinois' position in the hearing held on August 21, 2001, and no party presented any objections at that time. (AI Draft Proposed Order at 4).

1. Technical Infeasibility

Ameritech Illinois' testimony shows that waivers for six of the "Texas" measures are being sought on the basis of technical infeasibility. According to Ameritech Illinois, its request concerns either (1) measures for systems that Ameritech Illinois has not deployed; or (2) measures for products which Ameritech Illinois no longer offers. (AI Ex. 1.0 at 6).

For example, Mr. Fioretti observed, SBC's Texas measures contain an average response time for a system called the Easy Access Sales Environment ("EASE") (SBC PM #3 EASE Average Response Time). EASE is a proprietary system deployed by SBC, which supports the ordering of standard residence and business telephone service. Mr. Fioretti states that AI has not deployed EASE and does not currently offer a system like EASE, which provides direct access to ordering. Therefore, he maintains that it is infeasible to implement SBC PM #3, "EASE Average Response Time". (*Id.* at 7)

The five remaining measures that are unable be implemented, (based on technical infeasibility grounds) relate to interim number portability, ("INP") which SBC offers in some areas. These five measures are as follows:

PM #87	Percentage Installation Completed Within "X" (3, 7, 10) Days -- INP
PM #88	Average INP Installation Interval
PM #89	Percentage INP Only I-Reports Within 30 Days
PM #90	Percent Missed Due Dates (INP Only)
PM #116	Percentage of Missed Mechanized INP Conversions

In Illinois, Mr. Fioretti explained, although INP was utilized prior to the widespread availability of LNP, it was discontinued as a product offering in Ameritech Illinois' territory effective June 13, 1999. Thus, he maintains, there is no INP performance to measure. (*Id.* at 8). According to Mr. Fioretti's account, there is no disagreement among the parties to the collaborative, but that these six measures satisfy the "infeasibility" standard. (*Id.* at 9).

2. Parity v. Benchmark

Ameritech's testimony further notes that "waivers" are required to allow for the use of benchmark, instead of parity, standards for certain wholesale functions. (Merger Order at 221) According to Mr. Fioretti, the terms "parity" and "benchmark" outline different standards for assessing performance. A "parity" standard applies when there is a retail analog for the wholesale function being measured. In this situation, Ameritech Illinois' wholesale performance is compared to its own retail operations or the service it provides to an affiliate.

A “benchmark” standard applies where there is no reasonably available, agreed-upon retail analog for the wholesale function. (Id. at 10) In these instances, an objective measure is established for completion of the operation in terms of seconds, hours, or other appropriate measure of timely performance, and Ameritech Illinois’ wholesale performance is compared to those objective measures. Of the 122 Texas measures, AI indicates that 62 were based on benchmarks. (Id. at 11)

As a result of the collaboratives, Ameritech Illinois states that the parties and Staff have reached agreement on the use of parity and benchmark measures. It is agreed, Mr. Fioretti reports, that 40 of the 62 Texas benchmark measures and parts of two others can be based on benchmarks. (Id.) The parties further agreed to revisit five of these 42 benchmark measures in future collaborative workshops, in order to determine whether a retail analog has become available. (Id.) In addition, with respect to two of these measures, Ameritech Illinois and the CLECs agreed to change the Texas benchmark so as to impose a more rigorous performance standard on Ameritech Illinois. For 19 of the remaining benchmark measures, Mr. Fioretti maintains, the parties developed and agreed upon a retail analog in order to make a parity approach possible. (Id. at 12).

Schedule 1 of AI Ex. 1.0 lists all the performance measures and indicates whether a benchmark or parity approach will be used. Further, Schedule 2 of the same exhibit lists the agreed-upon benchmark measures and provides explanations as to why a retail analog is not available. Mr. Fioretti maintains that the granting of a waiver is appropriate for all of these uncontested measures.

3. Firm Order Confirmation

In addition, Mr. Fioretti’s testimony states that as the result of discussions that followed the filing of the instant petition, new disaggregations and associated benchmark standards (for PMs #5 and 94) have been agreed to for three measures involving Firm Order Confirmations (“FOCs”):

- PM #5 -- Percent Firm Order Confirmations Returned Within “X” Hours for Resale and Unbundled Network Elements.
- PM #6 -- Average Time to Return Firm Order Confirmations for Resale and Unbundled Network Elements.
- PM #94 -- Percent Firm Order Confirmations Returned Within “X” Hours for Local Number Portability.

(Id. at 12)

Mr. Fioretti notes that a separate benchmark was not established for PM#6, because it is simply a diagnostic measure of the same performance that is being assessed directly in PM#5. In other words, it is not a stand-alone performance measure. (Id. at 16).

According to the testimony, the FOC is a status notice that Ameritech Illinois provides to CLECs as part of the ordering process in the wholesale environment. (Id. at 12, 13). Ameritech Illinois' wholesale order interface ("EDI" for electronic orders) and wholesale service representatives (manual orders) check CLEC orders for format and content. CLEC orders which are improperly formatted, or which do not contain necessary data, are returned to the CLEC with a rejection notice. Orders that are correct and accurate are confirmed. The purpose of the FOC measures is to assess the amount of time it takes Ameritech Illinois to notify the CLEC that an order has been accepted as accurate and complete. According to Mr. Fioretti, the FOC is, by its nature, unique to the carrier-to-carrier relationship that exists in the wholesale environment. (Id. at 14). Mr. Fioretti further explained that the Texas performance measures contain benchmark standards for FOCs. (Id. at 15)

Mr. Fioretti explained that the agreed-upon benchmarks for FOCs are based on the Texas performance measures, with further modifications. As the result of negotiations between the parties, Ameritech Illinois modified its FOC measures to establish two separate categories for electronic orders: (a) those that flow through, and, (b) those that drop for manual intervention. Different benchmarks were established for each category, as appropriate. Thus, AI committed to a two-hour FOC benchmark on flow-through orders, and will maintain the benchmark for electronic, manually processed orders to allow for a five-hour FOC interval. (Id. at 18). Mr. Fioretti's testimony indicates that Bell Atlantic has taken a similar approach. Schedule 3, included in AI Ex. 1.0, describes all of the applicable standards under PM #5 and the remaining two FOC measures in this proceeding. On the basis of the showing described above, AI requests a waiver of the parity standard for these three FOC performance measures.

Staff/CLEC Position

At the August 21, 2001 hearing, counsel for AI informed the Commission that discussions among the parties continued even after the filing of the instant petition. According to AI's counsel, those discussions proved successful in settling the contested issues in this proceeding. (Tr. 27). Both Staff and AT&T agreed with these representations. (Tr. 28). No objections to any of the waiver requests described by AI in this proceeding have been put before the Commission.

Commission Analysis and Conclusion

Having reviewed the testimony in this cause, the Commission is of the opinion that each of the waivers herein requested by Ameritech Illinois is reasonable and should be granted. The fact that no party or the Staff, has opposed waivers in any of the instances described by Ameritech Illinois provides further support for our conclusion. Specifically, we approve waivers for (a) the six Texas measures outlined above (and supported by AI Ex. 1.0 at 6-9) on the basis of technical infeasibility; (b) the use of benchmarks for all of the noncontested measures as described above and supported by AI Exhibit 1.0 at 9-12, Schedules 1 and 2; and (c) the three benchmark standards

proposed for the Firm Order Commitments, as explained above and set out in AI Ex. 1.0 at 12-19.

The Commission further commends the parties for working together, and in a cooperative spirit, to resolve the contested issues in this proceeding. Finally, we observe that any issues regarding the benchmarks themselves and/or performance remedies will be addressed in Docket 01-0120, now pending.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, and being fully advised in the premises thereof, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company ("Ameritech Illinois") is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over Ameritech Illinois and the subject matter of this proceeding;
- (3) the recital of facts and law and the conclusions articulated in the prefatory portion of this Order are supported by evidence of record, and are hereby adopted as findings of fact and conclusions of law for the purposes of this Order;
- (4) the waivers requested by Ameritech Illinois are reasonable, have not been objected to by either Staff or any of the parties and should be granted.

IT IS THEREFORE ORDERED that the Petition for Waiver filed by Illinois Bell Telephone Company is granted in each of the instances outlined above.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLIES ON EXCEPTIONS DUE:

October 12, 2001
October 19, 2001
October 26, 2001

Eve Moran,
Claudia Sainsot,
Administrative Law Judges